

4-18-06
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REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

pg 18

APR 21 2005

Regulatory Branch

Mr. Craig Pulijan
Ash Grove Cement Company
3801 East Marginal Way South
Seattle, Washington 98134

Reference: 200501219
Ash Grove Cement Co.

Dear Mr. Pulijan:

Our regulatory program utilizes a series of nationwide permits (NWP) to authorize specific categories of work that have minimal impact on the aquatic environment when conducted in accordance with the permit conditions (*Federal Register*, January 15, 2002, Vol. 67, No. 10). Based on the information you provided to us, NWP 3, Maintenance, authorizes your proposal to replace a 35-pile dolphin with a 3-pile dolphin in waters of the United States as depicted on the enclosed drawings Dated April 2005. The project would occur in the Lower Duwamish Superfund Area, Duwamish River, at Seattle, Washington.

In order for this NWP authorization to be valid, you must ensure that the work is performed in accordance with the enclosed *Nationwide Permit 3, Terms and Conditions* and the following special conditions that we have added to ensure that this project would have no more than a minimal adverse impact on the aquatic environment:

a. In order to protect Chinook salmon and bull trout, the permittee may conduct the authorized activities from October 1 through February 15 in any year this permit is valid. The permittee shall not conduct work authorized by this permit from February 16 through September 30 in any year this permit is valid.

b. You must implement and abide by the Endangered Species Act requirements and/or agreements set forth in your Reference Biological Evaluation Specific Project Information Form (For Replacement of up to Eighteen Existing Piling), dated July 14, 2005, prepared by Anchor Environmental, Inc., in their entirety. You must also comply with the conditions included in the enclosed *General Implementation Conditions*. The National Marine Fisheries Service (NMFS) concurred with a finding of "may affect not likely to adversely affect" Chinook salmon based on this document on January 19, 2006 (NMFS Reference# 2006/001123). The U.S. Fish and Wildlife Service (USFWS) concurred with a finding of "may affect, not likely to adversely affect" the bull trout and bald eagle based on this document on March 18, 2006. Both agencies will be informed of this permit issuance. Failure to comply with the commitments made in this document constitutes non-compliance within the ESA and your

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U.S. Army Corps of Engineers permit. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.

Due to the project location within the Lower Duwamish Waterway Superfund area, EPA Superfund coordination has been completed for the project. To ensure compliance with CERCLA, the following conditions will be conditions of the U.S. Army Corps of Engineers permit:

c. You must implement the requirements and/or agreements set forth in the enclosed document entitled, Best Management Practices for Pile Removal and Disposal, Amended July 19, 2005, prepared by the Environmental Protection Agency (EPA).

d. By accepting this permit, the permittee agrees to accept such potential liability for response costs, response activity and natural resource damages as the permittee would have under Comprehensive Environmental Response, Compensation and Liability Act 42.U.S.C. 9601 et seq. (CERCLA), or the Model Toxics Control Act, R.C.W. 70.105 (MTCA) absent the issuance of this permit. Further, the permittee agrees that this permit does not provide the permittee with any defense from liability under the CERCLA or MTCA. Additionally, the permittee shall be financially responsible for any incremental response costs attributable under CERCLA or MTCA to the permittee's activities under this permit in the Lower Duwamish Waterway.

In order for this NWP authorization to be valid, the Washington State Department of Ecology (Ecology) must have issued or waived Section 401 Water Quality Certification (WQC) [and, for Washington's 15 coastal counties, concurred with or waived a Coastal Zone Management (CZM) consistency determination]. Based on our review of the proposed work, the Corps has determined that the proposed work will be in compliance with Ecology's WQC and CZM consistency determination concurrence requirements for this NWP. Therefore, no further coordination with Ecology is required.

We have reviewed your project pursuant to the requirements of the Endangered Species Act (ESA). After consulting with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, we have determined that this project meets the requirements of NWP National General Condition 11 provided you comply with special conditions "a" and "b" listed above. We have also reviewed your project pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 in regards to Essential Fish Habitat (EFH). We have determined that the proposed action will not adversely affect EFH for federally managed fisheries in Washington.

Our verification of this NWP is valid for 2 years from the date of this letter unless the NWP is modified, reissued or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2007. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore,

if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit. This verification includes a preliminary jurisdictional determination that is not appealable.

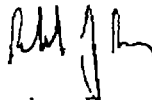
If this project complies with all terms and conditions of this NWP, you will need no further authorization from us. However, you must still obtain all State and local permits that apply to your project. Also, we remind you that failure to comply with all terms and conditions of this NWP verification invalidates your authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the 1899 Rivers and Harbors Act.

Upon completing the authorized work, please fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit* form to the address indicated on the form. Your signature on this form is our assurance that the completed work and any required mitigation was conducted in accordance with the terms and conditions of this NWP.

Thank you for your cooperation during the permit process. Your efforts help us protect our nation's aquatic resources, including wetlands. We are interested in your thoughts and opinions concerning your experience with our Regulatory Program and encourage you to complete a customer service survey form. This form and information about our program is available on our website at: www.nws.usace.army.mil click on Regulatory – Regulatory/Permits.

A copy of this letter without enclosures will be furnished to Ms. Kristin Noreen, Anchor Environmental, 1423 Third Avenue, Suite 300, Seattle, Washington 98101. If you have any questions about this letter or our regulatory program, please contact me at (206) 764-3428 or via email at matthew.j.bennett@usace.army.mil.

Sincerely,



For Matthew Bennett, Environmental Analyst
North Section

Enclosures